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7 Attorney for Debtors,
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9

10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF CALIFORNIA
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15 In re:) Case No.: 2010-36290
16)
17 ERIK & CATHRYN MIDDENDORF) MOTION FOR ORDER TO ABANDON
18) PROPERTY
19)
20 Debtors)

21 Date: 09/04/10
22 Time: 9:30 am
23 Court Room: 35
24 Judge: Honorable Christopher M. Klein
25

23 COMES NOW Debtors, ERIK & CATHRYN MIDDENDORF, by and through her
24 attorney of record, RICHARD A. LENARD, to move the court for an order to order the
25 Trustee to abandon certain property. This motion will be based upon the attached

1 memorandum of points and authorities, the declaration of RICHARD A. LENARD, the
2 notes and records on file with this court, and any other oral or documentary evidence
3 which may be presented in open court.
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10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **INTRODUCTION**

13 The Debtor in the present action originally filed for Chapter 7 protection on June
14 22, 2010, case number 2010-36290. The Debtor's primary residence located at 2608
15 Fryers Way, Mount Shasta, California, 96067, was included in the Chapter 7 petition. At
16 the time of filing, the fair market value was approximately \$396,000 and with a mortgage
17 balance of approximately \$500,000. This property therefore has no value to the
18 bankruptcy estate or to any creditor. On this basis, the Debtor's are requesting the
19 court to order the Trustee to abandon this asset.
20

21 **II.**

22 **THE COURT HAS JURISDICTION AND STANDING**

23 The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b) and
24 §1334(b) and is a core proceeding under 28 U.S.C. § 157(b)(2)(O). Venue is
25 appropriate in this court under U.S.C. § 1409(a).

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2 **III.**

3 **THE COURT HAS THE AUTHORITY TO ORDER THE TRUSTEE TO ABANDON THE**
4 **PROPERTY.**

5 Under 28 U.S.C. § 1334(a), the court is granted exclusive authority over all
6 bankruptcy matters. Further, 11 U.S.C. §554 authorizes to court to order the Trustee to
7 abandon back to the Debtors any property that is of inconsequential value or otherwise
8 burdensome to the estate. The mortgage balance is over \$100,000 greater than the fair
9 market value of the property and is therefore of no value to the bankruptcy estate. On
10 this basis, the court should exercise its authority and order to abandon the property
11 back to the Debtors.

12
13 **IV.**

14 **CONCLUSION**

15 The subject property is mortgaged beyond its fair market value leaving it with no
16 value to the bankruptcy estate and on this basis, the Debtor respectfully request that
17 this motion be granted.

18 Dated this 17th day of August, 2010

19 
20 **RICHARD A. LENARD**

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23 COMES NOW Debtors, ERIK & CATHRYN MIDDENDORF, by and through her
24 attorney of record, RICHARD A. LENARD, to move the court for an order to order the
25 Trustee to abandon certain property. This motion will be heard at the date and time

1 listed above at the United States Bankruptcy Court located at 501 I Street, Sacramento,
2 California, 95814. This motion will be based upon the attached memorandum of points
3 and authorities, the declaration of RICHARD A. LENARD, the notes and records on file
4 with this court, and any other oral or documentary evidence which may be presented in
5 open court.

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9 Dated this 17th day of August, 2010

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11 
12 RICHARD A. LENARD
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